K 1949

File No. O. Dist. Police/49

Legal Dept

A BRANCH

Subject:— Opinions under the Bombay District Police Act 1890

File No. O. Dist. Police/49

VI

C O N T E N T S.

Legal Department File No. 1 O. Dist. Police /1949.

Sr. No.	R.I. / O. No.	Subject.	Pages.
		Opinions under the Bombay Dist. Police Act, 1890.	
1.	O. No. 158, 1.1.49.	Section 38. I.P.C. Sec. 188 Question as to what steps should be taken by Govt. to make the order under sec. 38 effective and punishable.	1-4
2.	O. No. 3542, 1.4.49.	Sec. 46(3) - externment order -- Question whether the externee would commit any violation, if after having removed himself he enters into to the Province of Bombay.	5-6
3.	O. No. 4046, 13.4.49.	Sec. 45(2) Question whether the proposal to empower an ad hoc Committee to levy the the pilgrim tax would be legally feasible..	7-8
4.	O. No. 4429, 22.4.49.	Sec. 39(1)(k) Question whether an order directing the owner to stop the use the present privies or to convert them into "bhangi latrines" would amount to a provision agains pollution of water.	9-10
5.	O. No. 4902, 4.5.49.	Sec. 77(1) The Bombay District Municipal Act, 1901 , sec. 68. Question whether the The Bombay Municipal Boroughs Act, 1925, sec. 85. Question whether Govt .can claim exemption from payment of the general tax.	11.12.

Sr. No.	R.I. /O. No.	Subject.	Pages.
6.	O.No.6409. 8.6.49.	Sec. 46 (3) Question whether the order restricting movements of externess to a place outside the district is valid etc.	13-16.
7	R.I.No.7402 18.5.49.	Sec. 6(1). C.R.P.C. S. 7(2) Extending the jurisdiction of the D.S.P. Surat to Dangs Distbict.	17-18.
8.	O.No.6470. 13.6.49.	Sec. 46(3) Question whether there is any objection to pass an externment order against Bhawalkar.	19-&c.
9.	O.No.9708. 29.8.49.	Sec. 6(1) Question whether jursdiction of D.S.P. Surat automatically extends to Dangs District which is included in Surat District for Criminal jurisdiction.	23-26.
10.	O.No.9076. 11.8.49.	Appointments and disciplinary control by Deputy Inspectors General.	29-30.
11.	O.No.8791. Z 4.8.49.	Sec. 39 A Question whether the Rules would be applicable to the Calico Museum of Textiles and licence would be necessary.	31-34.
12.	.No.11613. 18.10.49.	Sec. 6 India States (Application of Laws) order, 1948.-- xAppointmtin Appointment of the D.S.Ps. in the merged areas.	35-36.

Sr. No.	R.I./O.No.	Subject.	Pages.
14.	O.No.13610. 25.11.49.	Question as to under what law in the absence of the real owner, the property should be returned to the finder .	37-38.
14	O.No.14408. 12.12.49.	R.L.A's opinion No.9076, dated 11.8.49. Modification of the order by substituting the words "Greater Bombay," for the words "Bombay City."	41-42.

M.H.D./8-8

Office of the R.L.A.

Cow slaughter.

Bombay District Police Act, 1890. Section 38.
Indian Penal Code, 1860. Section 188.

Chainani J. who heard the Criminal Revision Application No. 970 of 1945 held that the breach of the Order passed by Government under section 38 of the Bombay District Police Act, 1890, would not be publishable firstly because it is not an Order of a public sergant and secondly because there was no sanction of Government to file a complaint even assuming that the Order passed by Government is an Order of a public servant. He further held that the Order could be enforced under section 61, clause (j) of the Bombay District Police Act, 1890. In view of this decision, the R.L.A. is requested to advis what steps should be taken by Government to make the Order under section 38 of the Bombay District Police Act effective and punishable.

Chainani J's view that a breach of an Order under section 38 of the Bombay District Police Act can be punished under section 61, sub-section (1); clause (j) is not quite correct. Under that clause the slaughter of animals in or near to and within sight of a street so as to cause annoyance to the neighbouring residents or to passers-by would be publishable, provided the Magistrates can in them of the District by a Notification extend this section to the local area. It is, therefore, clear that t the breach of Order made under section 61(1)(j). The First District Magistrates can no doubt extend section 61 to th local area under their jurisdiction; but, such extension could prevent the slaughter of animals in or near the street only on the ground of annoyance to the inhabitants or obstruction to the passers-by. It is because of this difficulty that it was decided last year to have

recourse to section 38, for the order contemplated by Government under section 38 is much wider in scope.

Chainani J. has come to the conclusion that the breach of the Order is not punishable under section 188 of the I.P.C. because there was no sanction of Government even assuming that such Order is an Order which could have been passed by a public servant. But, in view of the definition of a public servant in the Indian Penal Code, it would be very difficult to contend that an Order made under section 38 would be an Order made by a public servant. Consequently even if the matter is re-agitated in a case where the sanction is given by Government, it is likely that the prosecution may fail. In this circumstance, it appears desirable that section 38 of the Bombay District Police Act should be so amended as to make breach of the Order made thereunder punishable as an offence under section 188 of the I.P.C. and that no sanction under section 196, Criminal Procedure Code, would be necessary for initiating such prosecution.

Sd/- P.M.Lad.
5.11
Remembrancer of Legal Affairs.

U.R. to H.D., No. 152, dated the 6th January 1949.

V.M.D./7-6
4c.

Office of the R.L.A.

Externment Order under sec. 46(3) of the Bombay District Police Act.

As there is no direction in the order passed by the Sub-Divisional Magistrate prohibiting the entry of the externee into the Province, the externee would not commit any violation, if after having removed himself he enters into the Province of Bombay. The order is thus defective. The view taken by the Secretary, H.D. is correct.

Sd/- P.M.Lad
31-3
Remembrancer of Legal Affairs.

U.R. to H.D., No. 3543, dated the 1st April 1949.

V.M.D./7-6
4c.

Office of the R.L.A.

The view taken by Dy. Secy., H.& L.G.D., is correct. Under section 45(2) of the Bombay District Police Act, ~~Nxxxx~~ 1890, the District Magistrate or the Collector alone would be entitled to assess and levy fees on persons visiting the fair and this power cannot be delegated to any other authority. The proposal to empower an ad hoc Committee to levy the pilgrim tax would not be legally feasible. It would not also be legally feasible to levy the cart tax or tail tax as such tax would not be a tax ~~xxxx~~ assessed on persons within the meaning of section 45(2). (Cf.R.L.A.'s opinions Nos. 118, dated 17.1.1931 and 658-P, dated 14.10.1936.)

Sd/- P.M.Nad.
13.4

Remembrancer of Legal Affairs.

U.O. to H. & L.G.D., No. 4046 , dated the 13th April 1949.

V.M.D./7-6
40.

Office of the R.L.A.

Bombay District Police Act, 1890. Section 39(1)(k)

An order directing the owner to stop the use of the present privies or to convert them into "bhangi latrines" would amount to a provision against pollution of water in the present case. Consequently there would be no legal objection to making such order under the latter part of clause (k) of section 39(1) of the Bombay District Police Act, 1890.

Sd/- P.M.Lad.
20.4
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 4489, dated the 22nd April 1949.

V.M.D./7-6
4c.

Office of the R.L.A.

The Bombay District Police Act, 1890, section 77(1).

The Bombay Dist. Municipal Act, 1901, section 68.

The Bombay Municipal Boroughs Act, 1925, section 85.

Section 77(1) of the Bombay District Police Act, 1890 makes no distinction between a building owned by Government and a building rented by Government and to entitle Government to claim exemption from payment of the general tax all that is necessary is that the building must be occupied by the members of the Police force for the convenient performance of their duties; but the exemption can be claimed by Government only if the tax would otherwise be payable by Government. If such tax is leviable as a rate on buildings or lands, the owner is primarily liable to pay it (see section 68 of the Bombay District Municipal Act, 1901 and section 85 of the Bombay Municipal Boroughs Act, 1925). Consequently if the building is rented by Government and if under the lease no specific liability to pay the general tax, leviable as a rate on building, is taken by Government, the question of claiming exemption from such tax under section 77(1) of the Bombay District Police Act would not arise, foreven if the tax is paid by Government, it can be deducted from the rent payable to the lessor.

(cf. section 68 of the Bombay District Municipal Act and section 85 of the Bombay Municipal Boroughs Act, 1925.)

Sd/- P.H.Lad
3.5
Remembrancer of Legal Affairs.

U.R. to H.D., No. 4902, dated the 4th May 1949.

V.M.D./ /-5
&c.

Office of the R.L.A.

Whether the order restricting movements of externees to a place outside the district is valid etc.

Bombay District Police Act, 1890.

Section 46(3)

Two questions are referred to the R.L.A. The first is whether in the incorporation of a direction restricting the movements of the externees to a particular town (outside the district) in the order of externment passed by the Sub-Divisional Magistrate, Belgaum, under section 46(3) of the Bombay District Police Act, 1890 (Bom. IV of 1890) would render the order invalid. The second is whether the period of six months which is prescribed as the period of externment would render the said order illegal.

It is not legally feasible to incorporate a direction in the order passed under section 46(3) restricting the movements of the externees to the town of Ratnagiri in the Ratnagiri District. Such direction is outside the scope of section 46(3) (see R.L.A's opinions No. A 9466 , dated 21.8.1947 and No. 9468 , dated 24.9.1947). It is however, possible to maintain that this direction is severable from the operative order, and from that point of view this direction would not render the order invalid.

Section 46(3) enables the District Magistrate or the Sub-Divisional Magistrate, as the case may be, to extern a person for an indefinite period. It is similarly possible to maintain that that power include the power to extern a person for a limited period, and the order is not invalid on that account.

Courts are, however, likely to construe such orders strictly in conformity with the provision of the section and may be astute in holding that the order is exfacie bad especially on the first point.

Government can pass a fresh order in appeal rectifying the above defects, if it is proposed

otherwise to maintain the other parts of the Sub-ses Divisional Magistrate's order.

Sd/- P.M.Lad
3.6
Remembrancer of Legal Affairs.

U.R. to M.D., No. 6409 , dated the 8th June 1949.

V.M.D./7-6
4c.

7402/18.5.49.

Submitted.

By para 4 of G.R., R.D. No. 4109/5-II, dated 10.3.1949, Govt. sanctioned the proposal made by I.G.P. that the area of the district of Dangs should be attache to the district of Surat for the Police administration, and that the D.S.P. Surat will exercise the jurisdiction and control over the police administration. H.D. states that in view of sec. 6(1) of the Bom. District Police Act, 1890 (IV of 1890), the Provincial Govt. has got option to appoint in a District a D.S.P., Dy. S.P. and A.S.P. as it may think expedient and there does not seem to be any objection to the appointment of a Dy. S.P. for the Dangs District which will be a sub-division of the Surat District so far as the Police administration is concerned. The R.L.A. is requested to advise.

2. Sub-section (1) of section 6 of the Bom. District Police Act, 1890 (Bom. IV of 1890), provides that the Provincial Govt. may appoint for each district a Superintendent, and Additional Superintendent and such Assistant and Deputy Superintendents of Police as it may think expedient. 'District' as defined by clause (d) of section 3 means a territorial division constituting a district for the purposes of the Code of Criminal Procedure, (1882) 1898. The word is not defined in the Code, nor in the General Clauses Act, 1897. Under section 7(1) of the Code , every Session division consists of one or more districts, Section 8 provides that the Provincial Govt. may divide any district outside the Presidency-town into sub-divisions or make any portion of any such district a sub-division and may later the limits of any sub-division. Section 10(1) provides that in every district outside the Presidency- towns the Provincial Governmentx shall appoint a Magistrate of the first class, who shall be

called the District Magistrate. It is clear from these provisions that the word "district" is used in the sense of a district or for the purpose of criminal jurisdiction- not necessarily co-extensive with a revenue district, though that is the normal condition- in charge of a District Magistrate (see in re Arumuga Salagan I.L.R. 54 Mad 1945. ~~Hm~~ A attention is inserted to R.L.A. opinion No. 9262 dated 17.11.42. Under sec. 6(1) ~~hh~~ of the B.D.L. Act, 1930 (Bom. IV 1930), the Provincial Govt. has to appoint a District Supdt. of Police for each district and it has no option to appoint a Dy. SoP. or A.S. P. in place of the District Supdt. of Police. The statement made at 'A' of H.D. note at p. 67 ante does not appear to be correct. (see R.L.A's opinion No. 9262 dated 17.11.42). By G.N., H.D. No 454306 dated 15.7.1942, issued under section 7(3) of the Cr.Pr. Code the revenue district of Dangs has been made a sub-division of the Surat District for the purpose of criminal jurisdiction. Since the revenue district of Dangs would thus form part of the Surat District for the purpose of criminal administration there is no legal objection to the extension of the jurisdiction and control of the the Dangs and to District Supdt. of Police, Surat, to the revenue district of the Dangs and to the appointment of a Dy. S.P. for that particular area as sanctioned in para . 4 of G.R., H.D. No. 4809/5-II dated 10.3.1949.

Sd/-
1.8

There appears to be some confusion in the noting of H.D. However the point is made clear in Mr. Madkarnis note & reply may be in return this note.

Sd/- R.T.K.
1.6

R.L.A. A.A to be the reply. Sd/- P.M.Lad/1.6

Sub-section (3) of section 46 requires that it should appear to the Magistrate that the movements or acts of the person are causing or calculated to cause alarm, danger or harm to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, and that in the opinion of the Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety Indian Penal Code defines x "injury" as denoting any harm whatever illegally caused to any person in body, mind, reputation or property. Compare also section 415. By "harm" we ordinarily mean damage, physical or otherwise, as done or suffered by some person or thing. If it could be substantiated that Bhawalkar has been cheating women, there would be justification for saying that his actions are causing harm to person or property. Similarly, if it be true that he has been outraging the modesty of young girls, he can be said to be engaged in the commission of an offence falling under Chapter XVI of the Indian Penal Code. Attention is , however, invited to the provisions of sub-section (4) of section 46A . Provided the order can successfully withstand the challenges indicated in that sub-section, there is, prima facie, no objection upon the assumptions made above to pass an externment order against Bhawalkar under

sub-section (3) of section 48.

Sd/- P.M.Lad.
11.6
Remembrancer of Legal Affairs.

U.R. to H.D. No. 6478 , dated the 13th June 1949.

V.M.D./746
4c.

Office of the R.L.A.

Question whether jurisdiction of District Superintendent of Police Surat automatically extends to Dangs District which is included in Surat District for Criminal jurisdiction.
District Police Act. 1890, s sec. 6(1).

In his opinion No. 5242, dated the 4th June 1949, the R.L.A. has already stated that there is no legal objection to the extension of the jurisdiction and control of the District Superintendent of Police, Surat to the revenue District of Dangs but the position may be made more clear as stated below. Under section 6(1) of the Bombay District Police Act, 1890 (Bom. IV of 1890) the Provincial Government can appoint only one District Superintendent of Police for each District. Section 2(d) defines 'district' to mean a territorial division constituting a district for the purpose of the Code of Criminal Procedure. By Government Notification, Home Department No. 4543/5, dated the 15th July 1948 issued under section 7(2) of the Code the revenue district of Dangs has been made a sub-division of the Surat District for the purpose of criminal jurisdiction. Thus the revenue district of Dangs forms part of the Surat District for criminal jurisdiction and, therefore, under section 6(1) of theDistrict Police Act only one District Superintendent of Police can be appointed for the said Surat District for Criminal jurisdiction. Since a District Superintendent Police has been appointed for the original Surat District his jurisdiction would automatically extend to the whole of the Surat District which now includesthe revenue District of Dangs. It is not therefore necessary to notify the District Superintendent of Police, Surat as District Superintendent of Police, for Dangs District (see

H.L.A's opinion week, dated the 17th November 1942). The view taken by Home Department, in para. 2 of its note, at page 22 111 ante, is correct.

Sd/- P.M.Lad
26.8.
Remembrancer of Legal Affairs.

U.O. to H.D. No. 9706 , dated the 29th August 1949.

V.M.D./7-(
4c.

Police Force in the Province e.g. Inspectors of Police, Police Prosecutors, Sub-Inspectors, Sergeants etc. shall be made by the Inspector General of Police of this Province (vide Govt. Order H.D. No. 7817/3-II (b) dated 15th July 1939).

The question of amending the said order has arisen in view of section 240 (2) of the Govt. of India Act, 1935 which provides that no person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed. As section 8 of the Bom. Dist. Police Act. 1890 was omitted by the Adaptation of Indian Laws Order, the H.D. order above referred to was issued making the I.G. P. the appointing authority in the case of Inspectors and Sub-Inspectors etc. (pl. see para. 9of the H.L.A's opinion No. 59 -P dated 3.7.1937 and 7160 dated 23.12.1937 wherein the position has been discusse in detail.) Hence there seems to be no objection to amending the said H.D. Order so far as its application to the Sub-Inspectors is concerned. But this amendment will have no effect in so far as the appointments already made by the I.G.P. are concerned

Sd/- 29-7

V.B.D./7-8
4c.

Office of the R.L.A.

Appointments and disciplinary control by Deputy Inspectors General.

The R.L.A. understands that there is a proposal to have a consolidated Police Act for the Provinces. That opportunity should be taken to incorporate therein provisions for the appointment and disciplinary control by Deputy Inspectors ~~Genx~~ General. It may, however, be observed that if in making every appointment the Deputy Inspector General is to secure the prior approval of the Inspector General there would be no saving in work; and such approval would appear unnecessary if the appointments are to be made from among candidates who are selected by a Committee of which the Inspector General will himself be a member.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs

R.U.P. to H.D. No. 9076 , dated the 11th August 1943

V.H.D./7-8
4c.

Office of the R.L.A.

The Rules for licensing premises are framed in exercise of the powers conferred by section 39A of the Bombay District Police Act, 1890. That section speaks of rules for licensing and controlling theatres and other places of public amusement, entertainment or assembly, including the entrance and exist of persons thereat and the decent and orderly conduct of proceedings therein and,in order to prevent the obstruction, inconvenience, annoyance, risk, danger damage of the residents or passengers in the vicinity prohibiting the keeping of places of public amusement entertainment or assembly. Under section 39AA the power is also given to prescribe and levy fees for licensing theatres and other places of public amusement, entertainment or assembly. In the preamble the Rules refer only to the licensing and controlling of theatres and other places of public amusement. However in Rule 1 the word "premises" is defined to mean any building or enclosure to which the public are admitted to witness any entertainment on payment of money. Neither the original section nor the Rules would be applicable to a museum like the Calico Museum of Textiles. The Museum no doubt provides visual instruction and it is true that the dictionary meaning of the word "entertainment" is capable of including therein mental enjoyment, instruction or amusement afforded by anything seen or heard (Iyer's Law Lexicon However, the expression "other places of public amusement, entertainment or assembly" occurring in section 39A must be construed in the light of the well known principle of noscitur a sociis, i.e., the meaning of a word must be ascertained by reference to the meaning of the words associated with it. That would be more necessary in this case because the object of the Rules is to control and licence places like theatres --

places where entertainment in the popular sense of the word is provided or where people assemble for some sue purpose. The nature of the place can also be gathered from the power given to control decent and orderly conduct of proceeding therein. The word "assembly" can be given its ordinary meaning as otherwise every busine office,collage or school would also be affected. Beside as pointed out above, the Rules, apply only to theatres and other places of public amusement " cannot be same principle the owrds "public amusement " cannot be construed to include the pleasure afforded by visual instruction in a cotton textile museum. Attention is particularly invited to the expression "witness any entertainment" occurring in Rule 1 , which defines "premises". Without doing violence to language, that expression also cannot be made applicable to what a visitor sees in a museum of this kind. For these fonsons the Rules would not be applicable to the Calico Museum of Textiles and no licence would be necessary.

Sd/- P.M.Lad.
3.8..
amembraneer of Legal Affairs.

U.E. to H.D. in No. 8791 , dated the 4th August 1948.

V.M.D./7-8
4c.

Office of the R.L.A.

Appointment of D.S. Ps.in merged areas.

Bombay District Police Act, 1890.Section 6 Indian States (Application of Laws) Order, 1948.

The view taken in the note of the Deputy Secretary, Home Department, dated the 5th September 1949, at page 18 ante that, in view of complete merger no further action seems necessary, is not correct. It has been held by the Government of India -- and this view is correct -- that the laws which have been applied to the States in virtue of the powers conferred by section 4 of the Extra Provincial Jurisdiction Act, 1947, and continued in force by paragraph 4 of the State Merger (Governor's Provinces) Order, 1949, are distinct from the laws in force in the Province of Bombay. Accordingly, the laws which have been applied to the Indian States by the Indian States (Application of Laws) Order, 1948, are distinct from the laws as in force in the Province proper. It will, therefore, be necessary to issue notifications under the Bombay District Police Act, 1890, as in force in the Province proper and as continued in the State territory. These notifications will operate from the date on which they are issued and cannot, therefore, have any retrospective operation. If any question regarding the validity of the action taken by police officers in the merged areas arises in the future validating legislation may then be undertaken.

Sd/- P.M.Lad.
17.10.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 11613 , dated the 18th October 1949.

The facts stated by the D.M. Kolaba, in his letter No. M.A. C.S-R- 104 (S) dt. 7.10.48. are these :-

In the year 1946, the grand-son of one Mr. Dayaram Vithal Vichare, a cloth merchant at Murud, found a gold necklace when Mr. Dayaram was sweeping his shop. Mr. D. delivered the necklace to the Police Sub-Inspector, Murud, who in 25.9.46 forwarded it to the D.M. Janjira through the D.S.P. Janjira, for orders under sect. 57 of the District Police Act. As no body established his claim to the necklace, on 18.4.48, TheD.M. Janjira ordered that it be sold by public auction. The necklace was accordingly sold by public auction on 12.5.49 and the sale proceeds amounting to Rs. 105/- are credited to Govt.

The D.M. Kolaba, however, states that the case papers is not show that any proclamation under Sect. 58(2) of the Dist. Police Act was issued by the D.M. Janjira. He is of opinion that the omission to issue the proclamation was an irregularity, but that should not deprive the finder of the benefit of law.

The R.D. requests R.L.A. to state under what law, in the absence of the real owner, the property should be returned to the finder.

Attention of the R.D. is invited to the provisions of Sects. 71, 168 and 169 of the Indian Contract Act, 1872 , and to the decision of the High Court in re-Maruti Babaji Sonar (I.L.R 47 Bom. p. 71).

In this connection attention is invited to R.L.A's opinion No. 1060 dt. 27.6.38 wherein late Mr. Allison deffered from the view taken by

pp 337-38 of Vol. E-104

Mr. Malik has in his opinion No. 555 dt. 16.8.40.
The Adv. General who was also consulted concrred
in the view taken by Mr. Allison (see A.G's
No. 60 dt. 24.7. 1928.

Sd/- 22.11

Reply may be :-
The view taken by D.M. Kolaba is correct.
The rule proceeds may be made over to the
finder of the necklace (see 47 Bom. 71).

Sd/- R.T.K.
23.11

Sd/- P.M.Lad
23.11
Remembrancer of Legal Affairs.

U.S.R. to H.D. No. 13510, dated 25.11.40.

V.M.D./8-
4c.

Order.

In pursuance of sub-section (3) of section 29 of the Bombay District Police Act, 1890 and in supersession of all previous orders on the subject, the Government of Bombay is pleased to direct that the power of enhancing punishment passed by the Superintendent of Police or a Head Constable or Constable shall also be exercisable by the Range Deputy Inspectors General of Police within his range.

By order of the Governor of Bombay,

Secretary to Government.

V.M.D./8-6
46.

Office of the R.L.A.

The view taken by Home Department at p. 44 is correct, The Home Department order at page 47 ante whic has already been issued may be slightly modified by substituting the words "Greater Bombay," for the words "Bombay City."

d/- P.M.Lad.
10.12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 14408 , dated the 12th December 1949.

V.M.D./8-6
4c.